IN THE

Supreme Court of the United States

October Term, 1960

No. 95

AMERICAN GUILD OF VARIETY ARTISTS,
JOEY ADAMS, as its President and
JOE SMITH, as its Treasurer,

Petitioners,

against

EUGENE DETROY

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

AARON BENENSON
Counsel for Petitioners
521 Fifth Avenue
New York 17, New York

J. P. Biss
R. Stern
Of Counsel

BAR PRESS INC. 16 LAFAYETTE ST. NEW YORK 13 — WA 5-3412

INDEX

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement of the Case	3
Reasons for Granting the Writ	6
Conclusion	16
Appendix:	
Opinion of the Court of Appeals	17
Opinion of the District Court	29
Applicable Statutes	34

Cases Cited

Bruner v. U. S., 343 U. S. 112 (1952)	7
Flaherty v. United Steel Workers, 46 LRRM 2483 (1960)	8
Johnson v. United Mine Workers, District 50, 186 Fed. Sup. 96 (1960)	8

PAGE

La Monte v. Smith, 197 N. Y. Sup. 2d 251 (1959) 14
Land v. Dollar, 330 U. S. 731, N. 2 (1947) 7
Larson v. Domestic & Foreign Commerce Corp., 337 U. S. 682, N. 3 (1948) 7

Shapiro v. U. S. 335 U. S. 1, 4 (1948) 7
Smith v. General Truck Drivers, 181 Fed. Sup. 14 (1960) 8

United Steel Workers Union v. American Manufacturing Co., 363 U. S. 564 (1960) 16
United Steel Workers Union v. Enterprise Wheel & Car Co., 363 U. S. 593 (1960) 16
United Steel Workers Union v. Warrior and Gulf Co., 363 U. S. 574 (1960) 16
U. S. v. Constantine, 296 U. S. 287 (1935) 7
U. S. v. Powell, 330 U. S. 238 (1946) 7
U. S. v. Ruzicka, 329 U. S. 287 (1946) 7
U. S. v. Standard Oil Company, 332 U. S. 301, N. 2 (1946) 7

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29 U. S. C. A. Sec. 411(a)(5) 2, 3, 8
29 U. S. C. A. Sec. 412 2, 3

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	PAGE
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August 11, 1959—p. 15530, col. 3	10
August 11, 1959—p. 15536	11
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April 22, 1959—p. 6479	10
Daily Congressional Record—Appendix:	
Vol. 105—A7915 (Sept. 4, 1959)	12
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August 13, 1959—p. 14493	11
August 13, 1959—p. 14494, col. 1	11
September 3, 1959—p. 16414	12

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GENE DETROY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled action pursuant to its decision dated January 13, 1961.

Opinions Below

The opinion of the Circuit Court of Appeals (Lumbard, C.J.) is reported at 286 Fed. 2nd 75; a copy thereof is contained in the Appendix at pages 17-28. The opinion of the District Court is reported at 189 Fed. Sup. 573; a copy thereof is contained in the Appendix at pages 18-33.

Jurisdiction

Judgment of the Court of Appeals was entered on January 13, 1961. There has been no application for rehearing or for extension of time to petition for certiorari. Jurisdiction of this Court is invoked under 28 U.S.C.A. Sec. 1254 (1).

Questions Presented

I. Where a member of a union has been subjected to discipline, may the provisions of 29 U.S.C.A. Sec. 412, Section 102 of the Labor Management Reporting and Disclosure Act of 1959, based upon a violation of 29 U.S.C.A. Sec. 411 (a)(5), be invoked by such member by the commencement of an action prior to the exhaustion of reasonable hearing procedures required by the union's constitution and by-laws, not in excess of a four-month lapse of time, as required by 29 U.S.C.A. Sec. 411 (a)(4)?

II. If the Court of Appeals was correct in holding that plaintiff below was not barred from commencing this action prior to the exhaustion of reasonable hearing procedures not in excess of a four-month lapse of time, did the Court err in holding that the state of facts in the instant case was such that judicial relief was warranted prior to exhaustion of union remedies not in excess of the four-month statutory period?

Statutes Involved

Statutes involved are the Labor Management Reporting and Disclosure Act of 1959, Secs. 101(a)(4), 101(a)(5) and 102, 29 U. S. C. A., Secs. 411(a)(4), 411(a)(5) and 412, printed in the Appendix annexed hereto, *infra*, at p. 34.

Statement of the Case

The plaintiff in the Court below commenced this action pursuant to the provisions of 29 U. S. C. A. Sec. 412, alleging a violation of 29 U. S. C. A. Sec. 411(a)(5) by the defendants. Jurisdiction was invoked on the basis of the existence of federal question pursuant to 29 U. S. C. A. Sec. 412.

The complaint alleges that the plaintiff, a theatrical performer, was a member of defendant, American Guild of Variety Artists, a labor organization, having jurisdiction over entertainers in the variety field of entertainment, which includes performances in nightclubs, circuses, carnivals, and other similar forms of entertainment; that in August of 1960 the plaintiff's name appeared on defendant AGVA's "unfair list", a list of performers in violation of the constitution or rules of AGVA and containing instructions that members of AGVA may not work for any employer or theatrical booking agent marked unfair and a notice to agents that they are not authorized to book members not in good standing in AGVA; the instructions and list were published in AGVA's periodical distributed to all AGVA members and agents and all others connected with the theatrical profession. The complaint alleges that plaintiff was not served with specific charges, given time to prepare his defense nor accorded a full and fair hearing pursuant to the provisions of the Labor Management Re-